

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GEORGE HENDERSON,

Plaintiff,

vs.

WHATCOM COUNTY FIRE
PROTECTION DISTRICT NO. 18; DONNA
COLE, in her official and individual
capacities; MICHAEL ELLIS, in his official
and individual capacities; and ALLAN
MACKAY, in his official and individual
capacities,

Defendants.

Case No. C05-1722RSL

ORDER DENYING DEFENDANTS'
MOTION TO DISMISS FOR
FAILURE TO STATE A CAUSE OF
ACTION

This matter comes before the Court on defendants' "Motion to Dismiss for Failure to State a Cause of Action" (Dkt. # 8).

Pursuant to Fed. R. Civ. P. 12(b)(6), claims may be dismissed only if it appears beyond doubt that plaintiff will be unable to prove a set of facts entitling him to relief. Wylar Summit Partnership v. Turner Broadcasting Sys., Inc., 135 F.3d 658, 661 (9th Cir. 1998). Limiting its review to the contents of the complaint, Campanelli v. Bockrath, 100 F.3d 1476, 1479 (9th Cir. 1996), the Court accepts the allegations as true and construes them in the light most favorable to the plaintiff. In re Syntex Corp. Sec. Litig., 95 F.3d 922, 925-926 (9th Cir. 1996); LSO, Ltd. V. Stroh, 205 F.3d 1146, 1150 n.2 (9th Cir. 2000).

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1 Defendants Whatcom County Fire Protection District No. 18, Donna Cole, and Allan
2 Mackay argue that plaintiff George Henderson fails to state a claim pursuant to 42 U.S.C. §
3 1983 because he does not assert the violation of a right independently secured by the
4 Constitution and laws of the United States of America. Dkt. # 8 at 2. Although defendants
5 correctly identify the limited scope of 42 U.S.C. § 1983, they misstate the source of plaintiff's
6 cause of action.

7 Section 1983 protects "rights, privileges, or immunities secured by the Constitution and
8 laws..." of the United States of America, 42 U.S.C. § 1983, and creates no independent cause of
9 action. Gonzaga University v. Doe, 536 U.S. 273, 285 (2002). Because the Constitution and
10 laws of the United States do not protect a person's right to not be defamed, the common law tort
11 of defamation cannot form the basis of a claim under 42 U.S.C. § 1983. However, plaintiff
12 asserts a claim under the Fourteenth Amendment rather than the tort of defamation.

13 Plaintiff claims that he has been deprived, without due process, of his Fourteenth
14 Amendment right to his reputation and good name. Dkt. # 10 at 2. The Fourteenth Amendment
15 protects liberty and property interests. Board of Regents v. Roth, 408 U.S. 564, 569 (1972).
16 Liberty interests are violated when three conditions are met, "(1) the accuracy of the charge is
17 contested; (2) there is some public disclosure of the charge; and (3) the charge is made in
18 connection with termination of employment." Mathews v. Harney County, 819 F.2d 889, 891-
19 892 (9th Cir. 1987). When a public employee's liberty interests are violated during the
20 termination of his employment, he must be provided with a forum within which he may defend
21 himself. Codd v. Velger, 429 U.S. 624, 627 (1977); Mustafa v. Clark County School Dist., 157
22 F.3d 1169, 1179 (9th Cir. 1998). In his claim, plaintiff provides facts that, if proved true, could
23 support a finding of the violation of his liberty interests without the requisite opportunity for him
24 to defend himself.

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1 For all of the foregoing reasons, defendants' Motion to Dismiss (Dkt. # 8) is DENIED.

2 DATED this 20th day of January, 2006.

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5 Robert S. Lasnik
6 United States District Judge
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